

Bureau of Indian Affairs, Interior

§ 166.227

(1) Grant and approve the permit on behalf of Indian landowners where we are authorized to do so by law;

(2) Distribute the approved permit to the permittee(s) and, upon request, to the Indian landowner(s); and

(3) Record and maintain the approved permit.

§ 166.222 Are there standard permit forms?

Yes. Standard permit forms, including bid forms, permit forms, and permit modification forms are available at our agency offices.

PERMIT (LEASEHOLD) MORTGAGE

§ 166.223 Can I use a permit as collateral for a loan?

We may approve a permit containing a provision that authorizes the permittee to encumber the permit interest, known as a leasehold mortgage, for the development and improvement of the permitted Indian land. We must approve the leasehold mortgage that encumbers the permit interest before it can be effective. We will record the approved leasehold mortgage instrument.

§ 166.224 What factors does the BIA consider when reviewing a leasehold mortgage?

(a) We will approve the leasehold mortgage if:

(1) All consents required in the permit have been obtained from the Indian landowners and any surety or guarantor;

(2) The mortgage covers only the permit interest, and no unrelated collateral belonging to the permittee;

(3) The financing being obtained will be used only in connection with the development or use of the permitted premises, and the mortgage does not secure any unrelated obligations owed by the permittee to the mortgagee; and

(4) We find no compelling reason to withhold our approval, in order to protect the best interests of the Indian landowner.

(b) In making the finding required by paragraph (a)(4) of this section, we will consider whether:

(1) The ability to perform the permit obligations would be adversely affected by the cumulative mortgage obligations;

(2) Any negotiated permit provisions as to the allocation or control of insurance or condemnation proceeds would be modified;

(3) The remedies available to us or the Indian landowners would be limited (beyond the additional notice and cure rights to be afforded to the mortgagee), if the permittee defaults on the permit;

(4) Any rights of the Indian landowners would be subordinated or adversely affected in the event of a foreclosure, assignment in lieu of foreclosure, or issuance of a "new permit" to the mortgagee.

(c) We will notify the Indian landowners of our approval of the leasehold mortgage.

§ 166.225 May a permittee voluntarily assign a leasehold interest under an approved encumbrance?

With our approval, under an approved encumbrance, a permittee voluntarily may assign the leasehold interest to someone other than the holder of a leasehold mortgage if the assignee agrees in writing to be bound by the terms of the permit. A permit may provide the Indian landowners with a right of first refusal on the conveyance of the leasehold interest.

§ 166.226 May the holder of a leasehold mortgage assign the leasehold interest after a sale or foreclosure of an approved encumbrance?

Yes. The holder of a leasehold mortgage may assign a leasehold interest obtained by a sale or foreclosure of an approved encumbrance without our approval if the assignee agrees in writing to be bound by the terms of the permit. A permit may provide the Indian landowners with a right of first refusal on the conveyance of the permit interest (leasehold).

MODIFYING A PERMIT

§ 166.227 How can Indian land be removed from an existing permit?

(a) We will remove Indian land from the permit if:

(1) The trust status of the Indian land terminates;

(2) The Indian landowners request removal of their interest, with the written approval of the majority interest of the fractionated tract to be removed,